

**SAN JOSE McENERY CONVENTION CENTER  
TEMPORARY EXPANSION CCTV AND LIFE SAFETY PROJECT**

**NOTICE TO CONTRACTORS**

**INVITATION FOR BIDS**

The REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE invites sealed written proposals for the **SAN JOSE McENERY CONVENTION CENTER TEMPORARY EXPANSION CCTV AND LIFE SAFETY PROJECT** ("Project"), located in the Monterey Corridor Project Area, at Balbach and Market Streets, San Jose, California (the "Site"). The Project includes, but is not limited to: site demolition of existing improvements, paving modifications, security camera system at building exterior, procurement and installation of a pre-manufactured kiosk at building interior, and modifications/relocations to existing life safety components at the 80,000 square foot pre-engineered structure.

**FILING OF BIDS**

All bid proposals must be filed on or before **9:00 a.m., Pacific Time, Thursday, November 30, 2006**, at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14<sup>th</sup> Floor Tower, San Jose, California 95113, Attention: Bill Ekern, Director of Project Management, as set forth in the specifications, at which time and place all bids will be opened publicly and read aloud. Bids received after that time will not be accepted. All bid proposals must be enclosed in an envelope clearly marked as "Bid for the San Jose McEnery Convention Center Temporary Expansion CCTV and Life Safety Project".

Hand-delivered bids must be placed in the Bidder's Box located at the main reception desk at the Redevelopment Agency, 200 East Santa Clara Street, 14<sup>th</sup> Floor Tower, San Jose, California, no later than the time set forth above. Bids sent by regular or certified mail must be received by the Agency at the above-referenced address no later than the time set forth above. All bids must be enclosed in an envelope which is marked clearly

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as "San Jose McEnery Convention Center Temporary Expansion CCTV and Life Safety Project".

Each bid must be accompanied by either a certified check, cashier's check, or a bidder's bond in the sum of not less than 10% of the total aggregate of the bid including all add alternatives. Checks shall be made payable to "The Redevelopment Agency of the City of San Jose". Bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the Redevelopment Agency of the City of San Jose as beneficiary.

**CONTRACT DOCUMENTS/PLANS AND SPECIFICATIONS**

Instructions to Bidders and Contract Documents, including plans and technical specifications, may be purchased on or after October 30, 2006 at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14<sup>th</sup> Floor Tower, San Jose, California 95113, 408-535-8500 for a non-refundable charge of Fifty Dollars (\$50.00) per set. Checks must be made payable to "The Redevelopment Agency of the City of San Jose".

Bidders will have fully inspected the Project Site in all particulars and become thoroughly familiar with the terms and conditions of the Instructions to Bidders, and contract documents including plans, specifications and local conditions affecting the performance and/or costs of the work prior to submitting their bid proposal.

**PRE-BID MEETING**

One pre-bid meeting will be held on **Wednesday, November 8, 2006, at 9:00 a.m.** at the northwest corner of the Project Site, Balbach and Market Streets, San Jose, California. Attendance at the pre-bid meeting is not mandatory. Requests for interpretations shall be directed to the Agency at the address set forth in the Instructions to Bidders.

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**NONDISCRIMINATION / NONPREFERENTIAL TREATMENT**

The Nondiscrimination / Nonpreferential Treatment requirements of Chapter 4.08 of the City of San Jose Municipal Code apply to this Project.

**PREVAILING WAGES**

Attention is called to the fact that this is a Public Work subject to Labor Code §1771. Not less than the general prevailing rate of per diem wages and the general prevailing rates for holiday and overtime work must be paid on this Project. Copies of the prevailing rate of per diem wages are on file with the City of San Jose Office of Equality Assurance, 200 East Santa Clara Street, 5<sup>th</sup> Floor Tower, San Jose, California 95113, (408) 535-8430 and will be made available to any interested party on request.

**DEPOSIT OF SECURITIES IN LIEU OF RETENTION**

Pursuant to the terms and conditions set forth in Public Contracts Code Section 22300, the Contractor may substitute certain securities in lieu of the ten percent (10%) retention which will be withheld by Agency as retention to ensure Contractor's performance under the contract. Such substitution of securities in lieu of retention shall be at the Contractor's request and at the Contractor's sole expense. (Public Contract Code 22300).

**BOND REQUIREMENTS**

Bidder's attention is directed to those provisions of the contract documents which require the Contractor to whom the contract for work is awarded, to file with the Agency at the time the contract is executed, a Contractor's Labor and Material Payment Bond and a Contractor's Performance Bond meeting all the requirements of the contract documents and approved by the General Counsel of the Redevelopment Agency of the City of San Jose. Bonds shall be executed by a surety possessing a valid certificate of authority issued by the California Department of Insurance and shall name the Redevelopment Agency as beneficiary. The Contractor's Performance Bond shall be

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for 100% of the contract price. The Contractor's Labor and Material Payment Bond shall be for 100% of the contract price.

**CONTRACTOR'S LICENSE REQUIREMENTS**

All prospective bidders are hereby cautioned that the State of California Contractor's Law regulates license requirements for bidding various types of projects. This project can be bid by a contractor possessing, at the time of bid submittal, a valid Class A or Class C-10 California Contractor's License ("License"). Failure to possess the License shall render the bid non-responsive and shall act as a bar to award the contract to any bidder that does not satisfy these requirements at the time of bid submittal. Each bidder shall furnish satisfactory evidence of competency to perform the work contemplated. The contractor, in its proposal, shall be required to disclose its license classification, number, and expiration date. (Public Contract Code 3300).

**STATEMENT OF QUALIFICATIONS**

The Agency reserves the right to reject a bid if the bidder has not submitted a Statement of Qualifications as set forth in the contract documents prior to the date of the opening of the bids or with the bid proposal.

The Agency reserves the right to reject any and all bids or to waive any informalities in the bid.

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Bids may be held by the Redevelopment Agency of the City of San Jose for a period not to exceed ninety (90) days from the date of the opening of bids for the purpose of reviewing the bids and investigating the qualifications of the bidders prior to awarding the Contract.

THE REDEVELOPMENT AGENCY  
OF THE CITY OF SAN JOSE

By: \_\_\_\_\_  
DIRECTOR OF PROJECT MANAGEMENT

Date: \_\_\_\_\_

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**SECTION 00100**

**INSTRUCTIONS TO BIDDERS**

Section 1. General Information.

1.1. Project General Description. - The Redevelopment Agency of the City of San Jose (the "Agency") invites bids for the San Jose McEnery Convention Center Temporary Expansion CCTV and Life Safety Project (the "Project") which includes, but is not limited to: site demolition of existing improvements, paving modifications, security camera system at building exterior, procurement and installation of a pre-manufactured kiosk at building interior, and modifications/relocations to existing life safety components at the 80,000 square foot pre-engineered structure located upon certain property in the Monterey Corridor Project Area, at Balbach and Market Streets, San Jose, California (the "Site").

1.2. Site Coordination. - The "Contractor", as defined in the General Conditions, shall, prior to any use of the Site, coordinate its activities with the Agency.

Section 2. Bidder's Responsibilities and Representations.

2.1. Examination of Plans, Specifications, Special Provisions and Site of Work. - The bidder shall examine carefully the Site of the work contemplated and "Contract Documents", as defined in the General Conditions. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and scope of work to be performed, the quantity of materials to be furnished, and as to the requirements of the Contract Documents.

Bidders should direct their attention to the Agency requirement, noted in Section 00100, Instructions to Bidders, Section 7. – "Special Provisions", that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than fifteen percent (15%) of the original total contract price.

Where investigation of subsurface conditions has been made by the Agency in respect to foundation or other design, bidders may inspect the records of the Agency as to such investigation, including examination of samples, if any. When the Contract Documents include a log of test borings showing a record of the data obtained by the Agency's investigation of subsurface conditions, such log represents only the opinion of the Agency as to the character of material encountered by it in its test borings and is only included for the convenience of bidders.

Investigations of subsurface conditions are made for the purpose of design, and the Agency assumes no responsibility whatsoever with respect to the sufficiency or the

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accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unlooked-for development may not occur.

Making such information available to bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this Section and bidders must satisfy themselves through their own investigations as to conditions to be encountered.

No information derived from such inspection of records of preliminary investigations made by the Agency or its employees or from the Contract Documents will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract Documents.

2.2. Concealed Conditions. - The Contractor shall promptly and before the following conditions are disturbed, notify the Agency in writing of any:

(1) Material that the Contractor believes was not previously identified in the Construction Manual, and may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III, disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the Site differing from those indicated.

(3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

After receipt of notice from the Contractor, the Agency shall promptly investigate such conditions. If the Agency finds that the conditions do materially so differ as described in the Contractor's notice, or do involve hazardous waste not previously identified in the Contract Documents, and will result in a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the Agency may, in its sole discretion, elect to have Contractor perform any such work required by such differing conditions, and shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the Agency and the Contractor over whether or not the conditions materially differ, or involve hazardous waste, or will result in a decrease or increase in the Contractor's cost of, or time required for performance of any part of the work, or if the Agency does not elect to have Contractor perform any additional work required by such differing conditions, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The

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Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

2.3 Qualification of Bidders. - Bidders shall possess a valid California Class A (General Engineering Contractor) or Class C-10 (Electrical Contractor) Contractor's License. Failure to possess the Class A or Class C-10 License shall render the bid non-responsive and shall act as a bar to award of the contract to any bidder that does not satisfy these license, certification and registration requirements at the time of bid submittal. Each bidder shall furnish satisfactory evidence of competency to perform the work contemplated. The Agency reserves the right to reject a bid if the bidder has not submitted a Statement of Qualifications prior to the date of the opening of the bids.

Bidders must submit with their bid a statement of their qualifications and experience in performing similar construction work on or attached to the form entitled "Statement of Qualifications and Experience of Bidder". The Agency reserves the right to make an investigation of Bidder's qualifications to perform the work, including but not limited to, Bidder's financial condition, trustworthiness, fitness, capacity and experience to satisfactorily perform the contract.

It is the intention of the Agency to award a contract only to a bidder who furnishes satisfactory evidence that the bidder has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to prosecute the work successfully and promptly, and to complete the work within the time specified in the Contract Documents.

To determine the degree of responsibility to be credited to a bidder, the Agency will weigh any evidence that the bidder or personnel guaranteed to be employed in responsible charge of the work has or has not performed satisfactorily on other contracts of like nature and magnitude or comparable difficulty at similar rates of progress.

Notwithstanding any provisions in the Contract Documents to the contrary, failure of the bidder to submit the "Statement of Qualifications and Experience of Bidder" covering experience on similar work, the Agency may, at its option and sole discretion, reject the bid of such bidder, but Agency in no event shall be bound to reject such bid on such ground and may award a contract to perform the work to such bidder if the Agency, on the basis of information available to it from any source, concludes that such bidder has the experience and ability, machinery, facilities, plant, equipment, and the financial resources and stability necessary to carry out and complete the work within the time required.

2.4 Determining Prevailing Wage Rates and Classifications. Applicable prevailing wage rates and labor classifications are on file with the City of San Jose's Office of Equality Assurance, 200 East Santa Clara Street, 5<sup>th</sup> Floor Tower, San Jose, California 95113, (408) 535-8430. The City of San Jose does not allow some labor

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classifications – the Bidder is responsible for consulting the list of prohibited classifications and preparing the bid accordingly.

Section 3. Bidding Documents and Procedure.

3.1. Bidding Documents. - Bidding Documents include the Notice to Contractors/Invitation for Bids; Instructions to Bidders; Proposal Form; form of Bidder's Bond; Statement of Qualifications and Experience of Bidder; List of Subcontractors; Contractor's Performance Bond form; Labor and Material Payment Bond form; Owner-Contractor Agreement form; General Conditions and other Contract Documents; Noncollusion and Financial Statement Affidavit; and any Addenda issued prior to receipt of bids. Any bid not containing information required for submission of bid, or a bid containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected.

3.2. Addenda and Interpretations. - Written addenda by way of clarifications, amendments, changes or additions to the Contract Documents including a change to the proposed opening time, date or place may be issued by the Agency before the opening of bids. Addenda will be mailed by certified mail with return receipt requested or telephone facsimile (FAX) transmitted to all prospective bidders prior to the opening of the bids. Failure of any bidder to receive any addenda shall not relieve the bidder from any obligations imposed by the addenda. All addenda issued shall become a part of the Contract Documents and the price therefore, set forth in the bid. The date and time for closing of submission of bids set forth in the Invitation for Bids shall be extended by no less than 72 hours in the event the Agency issues any material changes, additions, or deletions to the bid package within 72 hours of the time established for bid closing.

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally. Every request for such interpretation should be in writing, addressed to The Redevelopment Agency of the City of San Jose, Attn: Dolores Montenegro, at 200 East Santa Clara Street, 14<sup>th</sup> Floor Tower, San Jose, California 95113, and to be given consideration, must be received at least five (5) calendar days prior to the date fixed for the opening of bids. Any and all such interpretations will be in the form of writing which, if issued, will be sent either by express mail, certified mail with return receipt requested or transmitted by telephone facsimile (FAX) to all prospective bidders prior to the date fixed for the opening of bids. Failure of any bidder to receive any such interpretation shall not relieve such bidder from any obligation under its bid as submitted. All interpretations so issued shall become part of the Contract Documents.

3.3. Proposal Forms. The Agency will furnish to each bidder a Proposal Form, which, when filled out, executed and accompanied by all supplements required in the Proposal Form, shall be submitted as its bid. Bids not presented on forms so furnished or submitted without all supplements may be disregarded.

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All proposals shall give the prices proposed both in words and in figures in the respective spaces provided, and shall be signed by the bidder. The bidder shall fill out all blanks in the Proposal Form, including, without limitation, all alternate prices. In the event the price for a particular item is zero, the bidder shall fill out the blank with the number and word "zero". In the case of any discrepancy between words and figures, the words shall prevail, unless it clearly appears in the proposal in Agency's opinion that the words rather than the figures are in error. Proposals shall be clearly written without erasures or deletions. Where unit prices are solicited, in the event of any discrepancy between the unit price and the extended price, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices, the sum of the extended prices shall prevail. The bidder shall not modify the Proposal Form or qualify bids.

A Proposal Form is attached. Additional copies may be obtained at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14<sup>th</sup> Floor Tower, San Jose, California 95113.

3.4. Designation of Subcontractors, etc. Bidder is hereby advised that the City of San Jose has an ordinance in place which precludes certain contractors, subcontractors and suppliers from performing work or providing material or services on Agency projects. Bidder is responsible for contacting Agency prior to submitting its bid to determine which contractors, subcontractors and suppliers have been barred from Agency projects. A bid submitted which contemplates the use of such contractors, subcontractors or suppliers on this Project will be found to be nonresponsive. The use of such contractors, subcontractors or suppliers on this Project by the successful bidder will, at Agency's option, be grounds for termination for cause of the contract.

Each bidder, in making a bid or offer to perform the work, shall in its bid set forth:

(a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work or improvement in an amount in excess of one-half of one percent of the bidder's total bid, and

(b) the portion of the work which shall be done by each subcontractor, including the dollar amounts of said work. The bidder shall comply with all the provisions of Section 4104 of the California Subletting and Subcontracting Fair Practices Act, Cal. Pub. Contr. Code §§ 4100-4114.1.

3.5. Bid Security. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security: a cashier's check made payable to the Agency, a certified check made payable to the Agency, or a Bidder's Bond executed as principal by the bidder and as surety, by an admitted surety insurer authorized to engage in such business in California, made payable to the Agency.

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The security shall be in an amount equal to at least ten percent (10%) of the total amount bid by a bidder, including alternate prices, if any, upon which such bidder makes its highest bid. A bid shall not be considered unless one of the foregoing forms of bidder's security is enclosed with it.

If the successful bidder fails to execute the contract or fails to provide satisfactory evidence of compliance with Paragraphs 6.1, 6.2 and 6.3 of these Instructions to Bidders, within the time specified in the Invitation For Bids or in the specifications referred to therein, the amount of the security may be declared forfeited to the Agency and all bonds so forfeited may be prosecuted.

It is understood that the bid security shall not be considered as liquidated damages for the failure of the bidder to execute and deliver the Contract Documents, insurance certificates and performance and payment bonds. The bid security shall neither limit nor fix liability to the Agency for damages suffered because of failure to execute and deliver the required Contract Documents, insurance certificates and bonds.

3.6. Withdrawal of Bids. - Any bid may be withdrawn at any time prior to the time fixed in the Notice to Contractors - Invitation for Bids for the opening of bids only by written request for the withdrawal of the bid filed with the Agency. The request shall be executed by the bidder or its duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to file a new bid. This section does not authorize the withdrawal of any bid after the time fixed in the Notice to Contractors - Invitation For Bids for the opening of bids.

3.7. Pre-Bid Meeting. - One pre-bid meeting will be held on **Wednesday, November 8, 2006, at 9:00 a.m., Pacific Time**, at the northwest corner of the Project site, Balbach and Market Streets, San Jose, California.

Section 4. Consideration of Bids.

4.1. Filing of Bids. - All bids must be filed with the Agency office at the Redevelopment Agency of the City of San Jose, 200 East Santa Clara Street, 14<sup>th</sup> Floor Tower, San Jose, California 95113, on or before the time specified in the Notice to Contractors - Invitation For Bids for opening the proposals.

4.2. Public Opening of Bids. - Bids will be opened and read publicly and the aggregate bid of each bidder declared at the time and place indicated in the Notice to Contractors - Invitation For Bids. Bidders or their authorized agents are invited to be present.

4.3. Award of Contract. - The award of the contract, if awarded, will be to the lowest responsible bidder. The award, if made, is expected to be made within ninety

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(90) calendar days after the opening of bids or within such later time as is mutually acceptable to Agency and lowest responsible bidder.

4.4. Rejection of Bids. - In its absolute and sole discretion, the Agency may reject any or all bids presented. Individual bids may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures or irregularities of any kind or if the supplements set forth in the Proposal Form are not submitted with the bid. The Agency may, in its absolute and sole discretion, waive any informalities or minor irregularities in the bids.

When bids are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a Power of Attorney must be on file with the Agency prior to opening bids or shall be submitted with the bid; otherwise, the bid may be rejected as irregular and unauthorized.

4.5. Disqualification of Bidders. Any one or more of the following causes may be considered as sufficient for the disqualification of bidder and the rejection of the bidder's bid.

(a) Submittal of more than one (1) bid for the same work from an individual firm, partnership, or corporation under the same or different names.

(b) Submittal of unbalanced bids in which the prices for some items are out of proportion to the prices for other items.

(c) Lack of responsibility as shown by past work judged from the standpoint of workmanship and progress.

(d) Uncompleted work which, in the judgment of the Agency, might hinder or prevent the prompt completion of additional work if awarded.

(e) For being in arrears on existing contracts, in litigation with the Agency or the City of San Jose, or having defaulted on a previous contract.

(f) Lack of competency as revealed by experience on other projects.

(g) Submittal of a bid not containing the required information, or a bid containing information which is subsequently proven false.

(h) Evidence of collusion among bidders.

(i) The bidder has been barred from bidding on Agency or City projects under the provisions of the San Jose Municipal Code Section 14.4.600 *et seq.* or has documented violations of prevailing wage law requirements through the City of San

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Jose's Office of Equality Assurance or the Department of Industrial Relations on City or Agency Projects.

4.6. Penalty for Collusion. - If at any time it shall be found that the person, firm or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract so awarded shall be null and void, and the Contractor and its sureties shall be liable to the Agency for all loss or damage which the Agency may suffer thereby, and the Agency may advertise anew for bids for such work.

4.7. Return of Bid Securities. - All bid securities will be held until the Contract Documents have been formally executed and the successful bidder has filed with the Agency, completed initial labor compliance documentation required for enforcement of prevailing wage requirements of this contract, the Faithful Performance Bond, the Contractor's Payment Bond, and the insurance policies required by the Contract Documents, after which such bid securities will be returned to the respective bidders whose bids they have accompanied.

4.8. Relief of Bidders. - After the time set for the opening of bids, no bidder shall be relieved of a bid, unless the Agency consents, and there shall be no change made in any bid because of a mistake. However, if such relief is not granted and the bid guarantee declared forfeit, the bidder may bring an action against the Agency in a court of competent jurisdiction in Santa Clara County for the recovery of the amount forfeited, without interest or costs.

The complaint shall be filed, and summons served on the Director of Project Management, Redevelopment Agency of the City of San Jose, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

To be relieved of its bid without forfeiture of its bid security, the bidder shall establish to the satisfaction of the Agency, determined in its sole and absolute discretion, that:

- (1) A mistake was made.
- (2) The Contractor gave the Agency written notice within five working days after the opening of the bids of the mistake, specifying in detail in the notice how the mistake occurred.
- (3) The mistake made the bid materially different than the Contractor intended it to be.
- (4) The mistake was made in filling out the bid and not due to an error in judgment or to carelessness by the Contractor in inspecting the site of the work, or in reading the plans or specifications.

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Other than the above described notice to the Agency, no claim is required to be filed by the bidder before bringing a legal action against the Agency under this Section to recover a forfeited bid guarantee.

A bidder who claims a mistake and is relieved of its bid or who forfeits its bid guarantee shall be prohibited from participating in further bidding on the contract for the public work on which the mistake was claimed or security forfeited.

**4.9 Protest of Bid Award** - A participating bidder may protest a proposed award for this Project. The protesting bidder shall deliver the written bid protest to Bill Ekern, Director of Project Management, 200 East Santa Clara Street, 14<sup>th</sup> Floor, San Jose, CA 95113. The protest shall be filed before 5 p.m. of the fifth working day following the bid opening date, or Agency's issuance of written notice to all bidders that award shall be made to a bidder other than the apparent low bidder ("Intent to Award"), whichever is later. The protest shall provide a full and complete statement specifying in detail the ground of the protest and the facts supporting the protest.

The Agency will not make any award for this Project prior to the expiration of the protest period. If a protest is received, the Agency will not award a contract until either the protest has been withdrawn, or the Agency's Executive Director has made a final, written decision as to the action to be taken relative to the protest.

The procedure and time limits set forth in this section 4.9 are mandatory and the bidders' sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

### **Section 5. Post-Bid Information.**

**5.1. Material Guaranty.** - The successful bidder may be required to furnish a written guaranty covering certain items of work for varying periods of time from the date of acceptance of the contract. The work to be guaranteed, the form and the time limit of the guaranty will be specified in the Contract Documents. Said guaranty shall be signed and delivered to the Agency before acceptance of the Contract. In addition the successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the work together with samples, which samples may be subjected to the tests provided for in the specifications to determine their quality and fitness for the work.

**5.2. Execution of Contract.** - The Owner-Contractor Agreement shall be signed by the successful bidder and returned, together with the labor compliance documentation, Contract, bonds, insurance, and labor compliance documentation within eight (8) calendar days, not including Sundays and legal holidays, after the bidder has received notice by certified mail with return receipt requested or delivered in person and signed for, that the Contract has been awarded. Any delay caused by the successful

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bidder in delivery of the Owner-Contractor Agreement executed by the Contractor, labor compliance documentation, bonds and insurance within eight (8) calendar days shall not be cause for extension of the Scheduled Completion Date as defined in the Proposal Form.

5.3. Failure to Execute Contract. - Failure to execute the Owner-Contractor Agreement and file labor compliance documentation, acceptable bonds and insurance as provided herein within eight (8) calendar days, not including Sundays and legal holidays, after the bidder has received notice either by an overnight delivery service or by certified mail with return receipt requested that the Contract has been awarded, shall be just cause for the annulment of the award and the forfeiture of the bid security. If the successful bidder refuses or fails to execute the Owner-Contractor Agreement and provide the required bonds and insurance policies and certificates, the Agency Board may award the Contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the Contract and provide the required bonds and insurance policies and certificates, such bidder's bid security shall be forfeited to the Agency and the Agency Board may award the Contract to the third lowest responsible bidder. On failure or refusal of the third lowest responsible bidder to whom the Contract is so awarded, to execute the same and provide the required bonds and insurance policies and certificates, such bidder's bid security shall be likewise forfeited to the Agency. The Agency Board may at any time readvertise for bids, or may provide that the work shall be done by the Agency's employees to the extent that such may be authorized by law.

Section 6. Labor Compliance Documentation; Performance Bond; Labor and Material Payment Bond; Insurance.

6.1. Performance Bond. - At the time of executing the Contract Documents, the successful bidder shall execute and file with the Agency the performance bond form provided in the Project Construction Manual or an Agency approved similar bond in the penal sum of at least one hundred percent (100%) of the Contract price, secured by one (1) or more sufficient sureties, acceptable to the Agency, conditioned upon the faithful performance of the Contract within the Contract time. In case of failure on the part of the Contractor to complete the Contract within the time fixed in the Contract Documents, or such extension thereof as may be allowed, the Contract shall be terminated and the Agency shall not thereafter pay or allow Contractor any further compensation for any work done by Contractor under said contract, and the Contractor or its sureties shall be liable to the Agency for all loss or damage which it may suffer by reason of the Contractor's failure to complete the Contract within such time.

6.2. Contractor's Payment Bond. - The Contractor shall, at the time of executing the Owner-Contractor Agreement, file with the Agency a good and sufficient bond on the bond form provided in the Project Construction Manual or an Agency approved similar bond in an amount not less than the sums specified in Section 3248(a) of the California Civil Code. To be approved, the payment bond must provide that if the

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Contractor or its subcontractor shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Employment Insurance Code with respect to the work or labor contracted to be done and performed by any such claimant, then the surety or sureties will pay for the same, in an amount not exceeding the amount of the bond, and also, in case suit is brought upon the bond, reasonable attorney's fees to be fixed by the court. To be approved, the payment bond shall, by its term, inure to the benefit of any of the persons named in Section 3181 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon the bond, including the right of action to recover on the bond, in any suit brought to foreclose the liens provided for in Title 15, Part 4, Division 3 of the California Civil Code or in a separate suit brought on this bond. The payment bond shall otherwise comply with all of the provisions of Title 15, Part 4, Division 3 of the California Civil Code.

Unless a Contractor's Payment Bond is filed and approved as herein provided, no claim in favor of the Contractor arising under the Contract shall be audited, allowed or paid by the Agency. Any persons named in Section 3181 of the California Civil Code shall receive payment of their respective claims in the manner provided by Chapter 4, Part 4, Division 3, Title 15 of the California Civil Code upon having complied with the conditions of Section 3183 of the California Civil Code.

6.3. Insurance Requirements. - The Contractor, at the Contractor's sole cost and expense and for the full term of the Contract or any renewal thereof, shall obtain and maintain at least all of the minimum insurance requirements set forth in Article 11 of the General Conditions for this Project prior to commencing any work or receiving payments therefore under this contract.

6.4. Notification of Surety Companies. - The surety companies and other signers of any of the above mentioned bonds, and all insurance companies, shall familiarize themselves with all of the conditions and provisions of the Contract Documents and Specifications, and they waive the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract, or of any other act or acts by the Agency or its authorized agents, under the terms of the Contract Documents and Specifications; and failure to so notify the aforesaid surety companies or insurance companies of changes shall in no way relieve the surety companies of their obligation under the Contract Documents and Specifications.

6.5 Labor Compliance Documentation. - The Contractor shall, at the time of executing the Owner-Contractor Agreement, file with the Agency a completed set of Labor Compliance Documentation on the form provided in the Project Construction Manual. If Contractor has any questions as to applicable labor rates or labor categories or use of apprentices, Contractor may direct questions to the City of San Jose's Office of Equality Assurance. To be approved, the Labor Compliance Documentation shall be complete as to all labor to be provided on the Project.

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**Section 7. Special Provisions - Specifications and Plans.**

7.1. Subcontracting. - The Contractor shall perform with the Contractor's own organization contract work amounting to not less than fifteen percent (15%) of the original total contract price.

7.2. Application of City of San Jose 1992 Standard Specifications and Details. - The work embraced herein shall be done in accordance with the Technical Provisions of the 1992 City of San Jose Standard Details insofar as the same may apply. In the event of a conflict between the terms and conditions of the Technical Provisions of the City of San Jose 1992 Standard Details and the Agency's Contract Documents and Project Manual, the Agency's Contract Documents and Project Manual shall control.

END OF SECTION 00100